



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,621	06/22/2001	Cary Lee Bates	ROC920010071US1	7429
7590	05/03/2006		EXAMINER	
Gero G. McClellan Thomason, Moser & Patterson, L.L.P. Suite 1500 3040 Post Oak Boulevard Houston, TX 77056-6582			BEKERMAN, MICHAEL	
			ART UNIT	PAPER NUMBER
			3622	
DATE MAILED: 05/03/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/887,621	BATES ET AL.
	Examiner	Art Unit
	Michael Bekerman	3622

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 June 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 810. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 9, 20, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claims 9, 20, and 27, these claims recite the limitation "a scanner error". There is insufficient antecedent basis for this limitation in the claim. No scanner is claimed in the system for a scanner error to occur.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 13-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 13-21, these claims appear to be merely a signal, which is considered programming (or merely data) per se, and is not statutory. If the preamble set forth such computer executable instructions on a computer readable medium, then the claim would appear to be statutory. Please reference MPEP 2106 (IV) (B) (1) (a) for the basis of this rejection. Also please reference the following URL with emphasis on Annex IV: <http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>.

These interim guidelines propose that such signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of Sec. 101. Public comment is sought for further evaluation of this question.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-8, 10, 11, 13-19, 21-26, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by McClung (U.S. Pub No. 2004/0143502). McClung teaches a guaranteed pricing system that includes all of the limitations recited in the above claims.

Referring to claims 1, 3-7, 13-18, 22, and 24-26, McClung teaches a host computer system as tracking a transaction by the item and purchase price, receiving and storing price matching data including an item match price, comparing the purchase price to a comparison price (item match price) periodically (over different time periods), and administering a credit for the price differential to the customer if the comparison price is lower than the purchase price (Paragraph 0007). The system inherently provides reasoning for crediting the customer (to maintain the lowest price). The system would inherently have to obtain a account number (customer identification number) in order to credit the customer's account.

Referring to claims 2 and 23, McClung teaches the credit card account as being an account with the vendor (Paragraph 0008, Sentence 3).

Referring to claims 8, 10, 19, 21, and 28, McClung teaches a price-guarantee period (Paragraph 0007). Recording and comparing purchase and current dates is inherent in offering the price-guarantee period.

Referring to claim 11, McClung teaches the retail entity as requiring a customer sign up for the vendor account and price guarantee service, which is a step of notifying (Paragraph 0131, Sentence 1). An “instead of” requirement is not a positive limitation or step.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 20, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClung (U.S. Pub No. 2004/0143502).

Referring to claims 9, 20, and 27, McClung teaches a price-guarantee period that could be (but not limited to) a week, a month, 3 months, 6 months, or a year (Paragraph 0007). McClung also teaches the monitoring competitors on a real time basis (Paragraph 0009, Sentence 2). McClung doesn’t specify the price-guarantee period as being same-day and doesn’t describe what would happen should a customer purchase a product in the morning with a lower comparison price appearing in the system later in the day. It would have been obvious to one having ordinary skill in the

art at the time the invention was made to have the price-guarantee period be whatever time period the retailer would prefer, including same-day. This would make the system more attractive to retailers by allowing them more choices.

6. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McClung (U.S. Pub No. 2004/0143502) in view of Walker (U.S. Pub No. 2001/0042785).**

Referring to claim 12, McClung teaches crediting an account with a vendor to implement a guaranteed pricing promotion. McClung doesn't teach the transferring of balances between different credit accounts. Walker teaches that it is well-known to transfer debt balances between accounts to take advantage of different account features (Paragraph 0011, Sentence 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to transfer a credit balance from one account to another in order to take advantage of retailer guaranteed pricing.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to price-guarantee systems:

U.S. Patent No. 5,642,279 to Bloomberg

U.S. Patent No. 6,292,786 to Deaton

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MB


Jeffrey D. Carlson
Primary Examiner